

**California Secretary of State  
Proposed Regulatory Action:  
Election Observations Rights and Responsibilities  
Proposed Regulation Text  
Addendum to the Initial Statement of Reasons**

This Addendum to the Initial Statement of Reasons address updates to the Proposed Regulation Text, which was originally submitted for a 45-day public comment on July 29, 2022, and for which a public hearing was held on September 12, 2022. Changes to the Proposed Regulation Text have been made based upon comments received during the 45-day public comment period and the public hearing.

**The factual basis and rationale of the following sections of the proposed regulations are modified as follows:**

**Section 20871. General Provisions.**

This section has been updated to clarify that the intent of the regulations is to provide uniform requirements rather than general guidelines for observers and elections officials to follow. In addition, a statement regarding increasing transparency in the elections process has been added, and for clarification. Finally, this section has been amended to make it clear that the regulations shall apply to all elections in California conducted under the provisions of the California Elections Code.

**Section 20872. Definitions.**

Subsection (f) – The term “listen” was added to the definition of “observe” as part of observing the elections process includes listening to election workers carrying out their duties and tasks.

Subsection (j) – This definition has been modified for clarity. The intent of this definition is to make it clear that observers have the right to be close enough to observe the processing of vote-by-mail identification envelopes and vote-by-mail ballots, but in no event is the elections official to allow the observer to view any confidential voter registration information in the voter’s registration record pursuant to Elections Code section 2194. Under Elections Code section 15104(d), observers must have the ability to see the vote by mail ballot return envelopes and the signatures thereon, but that must be done without disclosing any confidential voter registration information.

Subsection (k) – A reference to proposed Section 20783(b) has been added to the definition of “vote-by-mail processing” because there are additional activities listed in that section that are not included in Elections Code section 15101.

Elections Code section 15104 was added as a reference statute based upon the change to subsection (j).

## **20873. Rights of Election Observers.**

Subsection (a) has been amended to make it clear that observers have the right to observe rather than simply being allowed to observe. This change of text was made to clarify what rights an observer has.

Subsection (b) has been amended to make it clear that observers have the right to observe rather than simply being allowed to observe. This change of text was made to clarify what rights an observer has. In addition, this section now specifically states that the observer shall have the right to see the date provided by the voter on the vote-by-mail identification envelope. The observer has the right to see the vote-by-mail return envelopes and signatures thereon (pursuant to Elections Code section 15104(d)) and must also have the ability to see the date provided by the voter on the vote-by-mail identification envelope. The original text regarding challenges has been moved to its own subsection (c) for clarity and ease of reference.

A reference to voting technology has been added to subdivision (b)(1)(B) to make it clear that if a county utilizes signature verification technology when verifying signatures on a vote-by-mail ballot envelope, that process may be observed as well.

A reference to Section 20991 has been added to subdivision (b)(1)(C) for clarity as to what the elections official must do in the event there is more than one signature on and/or more than one ballot in the vote-by-mail identification envelope.

Subdivision (b)(1)(E) has been updated to include a reference to the duplication of votes cast on a sample ballot. If a voter casts their vote on a sample ballot and returns that to the county elections official, it must be duplicated for that vote to be processed.

Subdivision (b)(1)(J) has been added to include another part of the processing of vote-by-mail identification envelope and vote-by-mail ballot process. While this is a recitation of the provisions of Elections Code section 15154, this addition is necessary for clarity and ease of reference for observers and elections officials.

Subsection (c) has been amended to contain information on the right of observers to make challenges during the processing of vote-by-mail identification envelopes and vote-by-mail ballots. The text of (c) was taken from subsection (b) in the original proposed text. Subdivision (c)(1) was the original proposed text in this section. Subdivisions (c)(2) and (3) detail additional instances where a challenge may be made by an observer, and when those challenges are to be made. While these instances are provided in Elections Code section 15104 (which has been added to the text for clarity), they are recited in these sections for clarity and ease of reference for observers and elections officials. In addition, the burden of proof for a challenge and a statement about any doubt of interpretation being resolved in favor of the voter has been added. This is a recitation of Elections Code section 15016 but has been added for clarity and ease of reference for observers and elections officials. In addition, a new subdivision (B) has been added to provide the elections official with the authority to halt challenges in the event multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of vote-by-mail identification envelopes. The purpose of this addition is to provide elections officials with this authority in the event multiple challenges are being made that could be intended to interfere with the processing of the vote-by-mail identification envelopes. This situation has not occurred here in California, but has in other states. The intent of this section is

not to limit the rights of observers, but to allow the elections official to halt challenges if the elections official believes the multiple challenges are intended to disrupt the processing of vote-by-mail identification envelopes.

Subsection (d) has been modified to include the statement found in Elections Code section 14223 regarding how an inspection of the roster and lists may be made - the inspection shall occur at a time or in a manner which will impede, interfere, or interrupt the normal process of voting. Although this is a recitation of Elections Code section 14223(b), it is being added to this subsection for clarity and ease of reference for observers and elections officials.

Subsection (i) has been modified for clarity. The original proposed text referred only to supervisors at the central counting site, but this was a narrow provision. For clarity, that text has been stricken, and the terms “or activity being observed” to make it clear that observers may ask questions at any time or place so long as those questions do not interfere with the elections process being observed. In addition, for consistency throughout this chapter, a reference to the elections official having authority to designate a person to whom questions may be presented has been added to this section.

Subsection (j) has been added to make it clear that if an elections official utilizes signature verification technology during the processing of vote-by-mail identification envelopes, observers have the right to ask questions about that technology. In addition, for consistency throughout this chapter, a reference to the elections official having authority to designate a person to whom questions may be presented has been added to this section.

The original subsections (j), (k), and (l) have been renumbered based upon the addition of newly proposed subsection (j).

Newly identified subsection (k) has been modified to include newly proposed subdivision (j), as subdivision (j) provides observers with the right to ask questions on signature verification technology.

Newly identified subdivision (l) has been updated to correct a transposition in numbers in the reference to Section 20876.

Elections Code sections 14251 and 15106 have been added to the reference section.

#### **20874. Rights of County Elections Officials.**

Subsection (a) has been amended to include a statement to clarify that although the elections official has the discretion to determine the distance at which the observers are to observe, the elections official must ensure that the observers can see and view the elections process or activity being observed. The purpose of this is to protect the rights of observers, while balancing the needs of the elections officials with respect to the where the observers are to observe from.

For the purposes of clarity, the term “observe” has been added to subdivision (a)(5).

The text of subdivision (a)(6) has been rewritten for clarity purposes. The content of this subdivision has not been changed.

Additional text has been added to subdivision (a)(7) to clarify that the voter's signature and/or address are not considered confidential information for the purposes of processing vote-by-mail ballot return envelopes. Some counties will display a voter's signature from the voter's registration record for observers to view, so the intent of this section is to ensure that it is known to observers and elections officials that the voter's signature may be viewed by an observer.

Additional considerations for elections officials to utilize regarding the distance at which observers may be placed have been added to subsection (a). Newly proposed subsections (a)(9), (10), (11), and (12) provide additional considerations for elections officials to utilize when determining where observers may be located to observe a particular elections process or activity. The elections official must ensure that the observers can meaningfully observe the elections process or activity, while maintaining the safety and security of ballots, election workers, and observers.

Subsection (b) has been amended to require the observer to wear identification provided by the elections official, and to require that the identification provide the observer's name. Section 20875(b) contains this information as well for duties of observers, but is also provided in this subdivision to make it clear that the elections official has this duty as well.

The term "if applicable" has been stricken from subsection (c) as it was not clear as to its application. In addition, additional language has been included in subsection (c) to make it clear that the elections official may designate a person to receive questions and/or challenges either in writing or verbally. This provides the elections official with needed flexibility.

Additional language has been included in subsection (d) to make it clear that the elections official may designate a person to receive questions and/or challenges either in writing or verbally. This provides the elections official with needed flexibility.

Additional text has been added to subsection (e) to clarify that the elections official may ask an observer to be quiet, but only if the talking amongst the observers or their conduct is disrupting the elections activity or process being observed. The observers may need to discuss the activity amongst themselves but should do so in a manner that does not disrupt the elections process being observed.

Subsection (f) has been amended to define specific individuals who may warn an observer about their actions and/or ask the observer to leave the area. The definition of "elections official" covers a broad spectrum of individuals, so the purpose of inserting the specific individuals into this section is to ensure that only those persons with decision-making authority can provide a warning to the observers and then make the determination that the observer must be asked to leave. Additionally, text has been added to this section to allow the registrar of voters/county clerk or their designee remove the observer immediately. This has been added to this section because there could be an instance when an observer's conduct is so egregious that the observer should be asked to leave immediately so no further disruption or interference occurs.

Subsection (g) has been amended to remove "restrict" and instead use "limit" with respect to the number of observers who may be present in a certain location. This change is intended to make

it clear that observers may not be restricted from a certain location, but the number of observers who may be present may need to be reduced. Other changes were made to this subsection for clarity.

Subsection (h) has been added to make it clear that if there are more observers than can reasonably be accommodated are present, the elections official has the authority to limit the number of observers pursuant to Elections Code section 15004. In addition, this section provides that the elections official may rotate observers or provide a lottery-type drawing to provide an equal opportunity for those who wish to observe the chance to do so. This section does not contain a specific time for rotation as each elections process takes differing amounts of time, and each county elections office differs in many ways. The elections official is provided discretion here to ensure that all observers have a chance to observe, while minimizing disruptions to the particular process being carried out.

Existing subsections (h) and (i) have been renumbered based upon the insertion of newly proposed subsection (h).

Newly identified subsection (i) has been amended to include the safety and security for election workers regarding items that may be brought to a particular observation location. The existing text allows the elections official to limit certain items to ensure that those items do not interfere with the elections process. These items could also affect the safety and security of the workers, so the elections officials should have the discretion to limit items for those reasons as well. In addition, the remaining text of this section has also been amended for clarity.

## **20875. Duties of Election Observers.**

In subsection (b), the term “would” has been changed to “could” for the purpose of clarity.

Subsection (c) has been amended for clarity. The original text referred to disruption of the elections process, but not refers to either disruption or interference. Those two terms are not necessarily inclusive of each other. In addition, the reference to Section 20874(i) has been updated to reflect an additional section being added to Section 20874, and now refers to Section 20874(j).

## **20876. Duties of County Election Officials.**

Subsection (a) has been amended to include the term “written” regarding the observation rules and/or any written procedures. The purpose of adding “written” is to make it clear that all rules and procedures need to be in place for observers to review and be aware of during the observation process. If the rules and procedures are not written, then there could be confusion about the process and possibly unclear directions. This subsection also provides that the elections official may post these rules and procedures on the county website as well.

Subsection (b) has been amended to include a reference to “voter privacy.” This has been added to the list of reasons why the elections official may limit the use of certain devices at the place of observation to ensure that voter privacy is maintained.

Subsection (c) provides the elections official to determine what constitutes observer misconduct or interference. Additional text has been included in this section to ensure that the elections official is mindful of the content of the regulations and the rights of observers when determining whether or not certain behavior leads to misconduct or interference.

Subsection (d) provides for certain notices to be provided by the Elections Code. Additional text has been included to require the elections official to conspicuously post those notices so that observers will have clear information on when and where a certain activity will be taking place.

The term “badges” has been added to subsection (e) for clarity and consistency.

The original text of subsection (g) has been removed from this section, and moved to its own section 20877.

Subsection (f) has been changed to include a statement that the elections official shall not halt scheduled operations because an observer is present. The intent of this section (and the addition) are to ensure that the elections official does not need to modify scheduled activities because an observer is not present, and in no event shall an activity be halted because an observer is present. Elections officials are under strict timelines, and if they were required to pause an activity to wait for an observer to arrive, that could cause disruption to the elections process.

New subsection (g) has been added to reiterate that during the processing of vote-by-mail ballot identification envelopes and vote-by-mail ballots, no confidential voter registration information may be viewed by observers. Although this is already mentioned above in this chapter, the repetition is being included in the duties of elections officials section for clarity and ease of reference.

New subsection (h) has been added because some county elections officials utilize remote video feeds for certain elections processes. If a county does utilize video feeds for remote observation, the observers must be provided with some sort of mechanism to ask questions about and/or make a challenge to the process or activity being observed.

## **20877. County Election Panel Plans**

The provisions of this section were originally provided in subsection (g) of Section 20876. These provisions are clearer in their own section.

The originally proposed text of this section is unchanged, except for three alterations:

In the original text, the introductory paragraph had a deadline of 60 days prior to an election for counties to send their plans to the Secretary of State. To ensure that counties have sufficient time to plan the election, this deadline has been changed to 30 days prior to an election.

Also in the introductory paragraph, the original text provided that the county elections official may either make their plan available on the county website or provide a copy in person at the office of the elections official. This provision has been changed to require the elections official to post the plan on its county website and make a copy available at the office of the elections official. The purpose of this change is ensure that the information regarding the county's plan is readily available to all those who wish to view it.

Subdivision (1)(G)(vi) has been changed to add additional text. The additional text provides that the designated observation areas are to be located in a manner to allow continuous observation. This ensures that the observation process is not interrupted or obscured.

## **20878. Conduct of Election Observers.**

This section was previously identified as Section 20877 but has been renumbered due to a new section 20877 being inserted.

Subdivision (a)(1) originally had a list of actions that observers are not to do because those actions would interfere with the election. For clarity and ease of reference, this section has been broken down into separate actions, rather than one long sentence.

Additional prohibited actions have been added to subdivision (a)(1) to provide information on what an observer shall not do. The purpose of these additions is to make it clear to observers that they are not to interfere with the retrieval of vote-by-mail ballots from vote-by-mail drop boxes and/or vote-by mail dropoff locations or the processing of vote-by-mail return envelopes or ballots in any fashion. In addition, this section provides that an observer must not interfere with the conduct of the election in general or disrupt any other elections activity or process.

In addition, this subdivision ((a)(2) and (3)) now states that the observer shall not touch or handle any ballots, or physically handle voting materials. The elections official must ensure that the ballots and other voting materials are not removed or damaged in any fashion.

Subdivision (a)(8) has been amended to clarify the circumstances in which an observer shall not solicit a vote or speak to a voter regarding marking their ballot. The previous text was overbroad, and the changes are intended to make this specific and clear.

Subdivision (a)(10) has been updated to provide an exception to a possible stoppage of ballot processing. An observer has the right to make a challenge, which could lead to a stoppage, so this change is intended to make the right of an observer to challenge clear. The elections official can make the determination as to whether the processing shall stop.

Subdivision (a)(11) has been updated to remove the language regarding the use of equipment without the express permission of the elections official. To prevent interference with the election and tampering of equipment, the observers shall not have the right to touch voting equipment.

Elections Code section 15104 has been included in the reference section based upon the changes to this section.

### **20879. Voter Challenges.**

This section was previously identified as Section 20878 but has been renumbered due to a new section 20877 being inserted.

Additional text has been added to subdivision (a) to make it clear that an observer is not authorized to directly challenge a voter. While the existing text inferred that fact, the additional text has been included for clarity.

Subsection (b) has been amended to refer to a challenge made under Elections Code section 14240(c), and clearly state that the observer presenting a challenge has the burden of providing evidence of the alleged wrongdoing. The previous text provided a partial description of Elections Code section 14240(c), and the changes made are intended to clarify how those challenges are to be handled. In accordance with Elections Code section 14251, the evidence must establish, at a minimum, probable cause for the requested challenge. In addition, this section provides that any doubt in the interpretation of the provisions of the Elections Code shall be resolved in favor of the challenged voter. While these provisions are recitations of Elections Code sections 14251 and 15106, they are being added to this section to provide clarity and ease of reference to observers and elections officials.

Subsection (c) has been added to provide the elections official with the discretion as to how a challenge may be made during the vote-by-mail identification envelope and ballot processing. Based upon the unique situations of the counties and the timing of the processing, the elections official can best determine if a challenge should be made in writing, or if a verbal challenge is acceptable.

Subsection (d) has been added to provide elections officials to halt a challenge if the elections official has determined that mass challenges being made are frivolous and/or meritless. These challenges may be intended to disrupt the elections process being observed, and the elections official shall have the right to halt the challenge process in order to prevent interference with the conduct of the elections activity or process being undertaken. This situation has not occurred here in California, but has in other states. The intent of this section is not to limit the rights of observers, but to allow the elections official to halt challenges if the elections official believes the multiple challenges are being made to disrupt the conduct of the election.

Subsection (e) has been added to require the elections official to develop written procedures for a challenge process. The rules and procedures for challenges are not specific in the Elections Code, so this new section is intended to provide some framework for observers to be aware of in the event they wish to make a challenge. Part of the maintenance of the challenges is for the elections official to retain the name and organization (if applicable) of the person making the challenges so the challenger can be contacted if necessary. The elections official is to make the procedures available to observers where an elections process or activity is occurring.



To ensure that an observer making a challenge is made aware of the decision by the elections official regarding that challenge, subsection (f) has been added to require the elections official to notify the observer with the disposition of that challenge as soon as is practicable. There are no provisions in the Elections Code that would require this, but observers have a right to know the disposition of their challenge.

Elections Code sections 14251 and 15016 have been added to the reference section based upon the new provisions of this section.